

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

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THABO SEFOLOSHA,

4 Plaintiff,

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-against-

16 Civ.2564(JMF)

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P.O. JOHN PAUL GIACONA, P.O. JORDAN ROSSI,
7 P.O. RICHARD CASTER, P.O. DANIEL DONGVORT,
P.O. MICHAEL O'SULLIVAN, and THE CITY OF
8 NEW YORK,

9

Defendants.

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10 PERO ANTIC,

11 Plaintiff,

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-against-

Civil Action No.

16-cv-2425(JMF)

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THE CITY OF NEW YORK, POLICE OFFICER RICHARD
14 CASTER, individually and in his capacity as a
Member of the New York City Police Department,
15 POLICE OFFICER PAUL GIACONA, individually and
in his capacity as a member of the New York
16 City Police Department, POLICE OFFICER DANIEL
DONGVORT, individually and in his capacity as a
17 Member of the New York City Police Department,
POLICE OFFICER MICHAEL O'SULLIVAN, individually
18 and in his capacity as a member of the New York
City Police Department, and JOHN and JANE DOES,
19 said names being fictitious and intended to
represent individual officers, members, agents,
20 servants and/or employees of the New York City
Police Department in their individual and
21 official capacity,

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Defendants.

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EXAMINATION BEFORE TRIAL of the

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Defendant, P.O. RICHARD CASTER, taken by the

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Plaintiff, pursuant to Court Order, held at the

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Law Office of Jaroslawicz & Jaros, PLLC, 225

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Broadway, 24th Floor, New York, New York 10007,

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New York, New York 10007, on December 16, 2016,

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at 11:36 a.m. before a Notary Public of the

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State of New York.

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1 A P P E A R A N C E S:

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3 JAROSLAWICZ & JAROS, PLLC
Attorneys for Plaintiff THABO SEFOLOSHA
4 225 Broadway, 24th Floor
New York, New York 10007
5 BY: ELIZABETH EILENDER, ESQ.

6

7

8 ZACHARY W. CARTER, ESQ.
Corporation Counsel
9 Attorney1 for Defendant
THE CITY OF NEW YORK
10 100 Church Street
New York, New York 10007
11 BY: MATTHEW MODAFFERI, ESQ.

12 and

13 BRIAN C. FRANCOLLA, ESQ.

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16 THE COCHRAN LAW FIRM
Attorneys for Plaintiff
17 PERO ANTIC
55 Broadway, 23rd Floor
18 New York, New York 10006
19 BY: TRACEY L. BROWN, ESQ.

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1 P.O. R. CASTER

2 A. I don't know.

3 Q. You just saw Mr. Sefolosha with his
4 hoodie, coming out of the car, right?

5 MR. MODAFFERI: Objection. You
6 can answer.

7 A. I saw him coming back from his car, yes.

8 Q. Did he still have his hoodie on?

9 A. Yes.

10 Q. What did you see Mr. Sefolosha do, at
11 that point?

12 A. I saw him come over and talk to a
13 bystander, who is on the sidewalk.

14 Q. What, if anything, did you do?

15 A. I observed Officer Dongvort stand
16 between Mr. Sefolosha and the bystander, then
17 instructed the bystander to walk north on the
18 10th Avenue towards 18th Street.

19 Q. You heard it, or you saw it, or
20 something else?

21 A. I observed and heard. I observed
22 Officer Dongvort.

23 Q. How far away were you from Officer
24 Dongvort and this bystander, when you say
25 Officer Dongvort instructed the bystander to

1 P.O. R. CASTER

2 move?

3 A. Maybe five to 10 feet over from me.

4 Q. Were you able to hear Officer Dongvort's
5 voice?

6 A. Yes.

7 Q. What did he say?

8 A. I don't remember exactly what he said.
9 I remember him instructing the person to walk
10 north on 10th Avenue.

11 Q. Did you hear the bystander say anything,
12 in response to Officer Dongvort?

13 A. No.

14 Q. Did you see the bystander take any
15 physical actions, in his response to Officer
16 Dongvort's instructions?

17 A. I remember the bystander started moving
18 north on 10th Avenue.

19 Q. So that's a yes?

20 A. Yes.

21 Q. Where was Mr. Sefolosha, when Officer
22 Dongvort was giving instructions to this
23 bystander?

24 A. He was still there, and he made action
25 towards Officer Dongvort, who had his back

1 P.O. R. CASTER

2 turned.

3 (Whereupon, the record was read
4 by the reporter.)

5 Q. You used the words "made action," what
6 did you mean when you said it?

7 A. He made a charging lunging motion
8 towards Officer Dongvort, with his arm
9 extended, in a running motion.

10 Q. What do you mean he made a charging,
11 lunging, motion?

12 A. He took quick steps towards Officer
13 Dongvort, with his arm extended.

14 Q. Which arm?

15 A. I don't remember.

16 Q. Was it one arm, or more than one arm?

17 A. One arm.

18 Q. Were you physically located south of
19 this triumvirate, of Sefolosha, Dongvort, and
20 the bystander?

21 A. No.

22 Q. Where were you, physically, when you saw
23 Mr. Sefolosha make an action towards Officer
24 Dongvort?

25 A. Initially, I may have been slightly

1 P.O. R. CASTER

2 north of them. I remember Officer Dongvort and
3 the bystander cross my face, and Mr. Sefolosha
4 moving towards Officer Dongvort.

5 Q. Was Mr. Sefolosha saying anything, when
6 he was allegedly charging and lunging at
7 Officer Dongvort?

8 A. Not that I remember.

9 Q. Did it occur to you, that Mr. Sefolosha
10 was trying to get Officer Dongvort's attention
11 for some reason?

12 A. No.

13 Q. What did you think Mr. Sefolosha was
14 going to do, to Officer Dongvort?

15 A. I don't know what his intentions were.
16 It looked like he was going to possibly hurt
17 Officer Dongvort and make contact somehow.

18 Q. At that moment, you believed that Mr.
19 Sefolosha, at this location with police
20 officers all over the place, was going to
21 attack a police officer on the sidewalk, did
22 you think that?

23 A. I thought he could have, yes.

24 Q. You testified about this incident at
25 trial, and you testified about it at the CCRB,

1 P.O. R. CASTER

2 right?

3 A. Yes.

4 Q. You remember during those testimonies,
5 you said that you saw Mr. Sefolosha running
6 towards Officer Dongvort, do you remember
7 saying that?

8 A. Yes.

9 Q. Now you're saying he was charging and
10 lunging at Officer Dongvort?

11 A. Yes, in a running motion he took quick
12 steps with his arm extended, towards Officer
13 Dongvort.

14 Q. You didn't use the word charging and
15 lunging in your prior testimonies, did you?

16 MR. MODAFFERI: Objection. If
17 you know.

18 A. I don't know right now. I would have to
19 see my testimony.

20 Q. Did you review your prior testimony,
21 before testifying today?

22 A. Yes.

23 Q. When did you review your testimony?

24 A. I reviewed it about a month ago. And I
25 looked it over yesterday.

1 P.O. R. CASTER

2 Q. On your prior testimonies, you said that
3 Mr. Sefolosha was running towards Officer
4 Dongvort, now you're talking about charging and
5 lunging, in your mind is there a difference, or
6 is it the same thing, running is the same as
7 charging and lunging?

8 MR. MODAFFERI: Objection. You
9 can answer, if you think there's a
10 difference.

11 A. I'm describing the same incident. No
12 difference.

13 Q. Charging, has an offensive or an
14 aggressive inference, does it not?

15 A. Yes.

16 Q. In your mind, at that time, are you
17 saying that you believe Mr. Sefolosha was
18 making an aggressive move towards Officer
19 Dongvort, to potentially come in contact with
20 him, and possibly injure him?

21 A. Yes.

22 Q. Yes or no, did Mr. Sefolosha make any
23 physical contact with Officer Dongvort, that
24 you observed?

25 A. No, he didn't. I stopped him.

1 P.O. R. CASTER

2 Q. I just want to be clear, there was no
3 contact between Sefolosha and Dongvort,
4 correct?

5 A. No.

6 Q. How close did Sefolosha get to Officer
7 Dongvort, when he was charging and lunging?

8 A. Very close. If I didn't stop him, he
9 would have made contact with him.

10 Q. How close was he, when you say you
11 stopped him?

12 A. I estimate less than a foot.

13 Q. Was Mr. Sefolosha shouting or saying
14 anything, as he was charging Officer Dongvort?

15 A. I don't recall. No.

16 Q. You don't recall, or he wasn't saying
17 anything?

18 A. I don't recall if he was saying
19 anything.

20 Q. Did you hear any sounds coming out of
21 Mr. Sefolosha's mouth, as he was approaching
22 Officer Dongvort?

23 A. No.

24 Q. Did you say anything, when you observed
25 Mr. Sefolosha approaching Officer Dongvort?

1 P.O. R. CASTER

2 point, when Sefolosha and the bystander were
3 talking?

4 A. He was somewhere in the vicinity. I
5 remember he came over, and stepped between
6 them, and directed the bystander to move.

7 Q. And you're standing here watching this
8 whole thing go on and not continuing to move
9 other people off the block or off the corner,
10 or stop people from buying pizza, you're just
11 focused on this incident with Sefolosha coming
12 out of the car and talking to the bystander,
13 and Dongvort coming over, that's what you were
14 focused on?

15 A. Yes, they came right in front of my
16 direct vision.

17 Q. Why didn't you go over to Mr. Sefolosha
18 and the bystander and you tell them to move
19 off the block?

20 A. Because Officer Dongvort did before I
21 did.

22 Q. What did you physically do when you
23 observed what you say Mr. Sefolosha was doing
24 vis-à-vis Officer Dongvort?

25 A. I saw him running towards Officer

1 P.O. R. CASTER

2 Dongvort, I stepped in front of Mr. Sefolosha,
3 I stopped him, put my hands on either his arm,
4 or his shoulder, or body, and I walked him back
5 towards the street, and I then informed him
6 that he's under arrest.

7 (Whereupon, the record was read
8 by the reporter.)

9 Q. Where was Officer Dongvort, when
10 Sefolosha was allegedly running after him?

11 A. I did not see him. I don't know. He
12 was behind me.

13 Q. Let's back up. Where on 10th Avenue
14 were you, when you saw Sefolosha back out of
15 the car onto the sidewalk, to talk to the
16 bystander?

17 A. I was on 10th Avenue with my back
18 towards Artichoke Pizza.

19 Q. Where was this conversation, between Mr.
20 Sefolosha and the bystander?

21 A. It was happening almost right in front
22 of me.

23 Q. On the sidewalk?

24 A. Yes.

25 Q. When you say right in front of you, were